

REMARKS

Reconsideration of the above-referenced patent application is respectfully requested in view of the foregoing amendments and remarks set forth herein.

Claim 1 has been amended to recite the terminology of claim 2, which originally depended from claim 1. Claim 1 has been further amended to recite "an extract of *Centella asiatica* comprising Asiatic acid, madecassic acid, and asiaticoside", support for which is found at page 4, lines 14-15.

Claims 3-5 have been amended to correct informalities or to make them consistent with amended claim 1.

In the Office Action of April 20, 2006, the Examiner took the following actions to which Applicant herein makes response: (1) objected to claim 4 as lacking a terminal period; (2) rejected claims 1-19 under 35 U.S.C. 112, first paragraph, with respect to the terms "extract of *Centella asiatica*", "a first component supporting skin collagen structure", a second component that supports body defense and repair mechanisms", and "dipeptide"; (3) rejected claims 1 and 3 under 35 U.S.C. 102(b) as being anticipated by Collins et al. (US 6,203,805 B1); (4) rejected claims 1, 3, 4 and 13-15 under 35 U.S.C. 103(a) as being unpatentable over Collins et al.; (5) rejected claims 11-12, 16 and 18 under 35 U.S.C. 103(a) as being unpatentable over Collins et al. together with Cope (US 6,572,868 B1); (6) rejected claim 17 under 35 U.S.C. 103(a) as being unpatentable over Collins et al. together with Cope and Pirisi, A. (1998); and (7) stated that claims 2, 5-10 and 19 are free of the art. These rejections are traversed in application to the claims as amended, and consideration is requested of the patentability of claims 1 and 3-19 now pending in the application.

(1) Objection to claim 4 as lacking a terminal period

Claim 4 has been amended to add the period to overcome this objection.

(2) Rejection of claims 1-19 under 35 U.S.C. 112, first paragraph, with respect to the terms

“extract of *Centella asiatica*”, “a first component supporting skin collagen structure”, a second component that supports body defense and repair mechanisms”, and “dipeptide”

Applicant has amended claim 1 to recite:

1. A composition for application on skin, comprising:
 - a) a first component supporting skin collagen structure comprising ectoin ; and
 - b) a second component that supports body defense and repair mechanisms comprising an extract of *Centella asiatica* comprising asiatic acid, madecassic acid, and asiaticoside.

It is respectfully submitted that claim 1 as amended now meets the requirements of section 112, first paragraph by reciting ectoin as the first component, and the specific extract of *Centella asiatica* as the second component.

With respect to the Examiner's comments on claim 19 and the word “dipeptide”, Applicant would like to note respectfully that the first paragraph of 112 requires nothing more than objective enablement. How such a teaching is set forth, either by the use of illustrative examples or by broad terminology, is of no importance. In re Marzocchi, 169 USPQ 367 (CCPA 1971).

Applicant respectfully submits that based on the criteria set forth in Marzocchi, the requirement of objective enablement is clearly satisfied through Applicant's use of the term "dipeptide".

It is therefore submitted that claim 1 and claims 3-19 that depend therefrom are patentable under 35 U.S.C. 112, first paragraph.

(3) Rejection of claims 1 and 3 under 35 U.S.C. 102(b) as being anticipated by Collins et al. (US 6,203,805 B1)

Applicant respectfully submits that Collins et al. teaches topical compositions containing whey proteins that enhance collagen, as well as various vitamin components, but does not teach or suggest Applicant's invention. While the Examiner's statement is correct that these various components of Collins et al. “support collagen structure” and/or possess “antioxidant properties which help the skin”, Collins et al. neither teaches nor suggests the use of ectoin, nor an extract of *Centella asiatica*, nor the combination thereof, according to claim 1 as amended herein.

Therefore, claim 1 as amended is submitted to be patentable over Collins et al. under 35 U.S.C. 102(b). Claim 3 depends from and contains all of the limitations of claim 1 as amended and is therefore submitted to be similarly patentable over Collins et al.

(4) Rejection of claims 1, 3, 4 and 13-15 under 35 U.S.C. 103(a) as being unpatentable over Collins et al.

Applicant incorporates by reference the above remarks made with respect to claim 1 as amended, which as stated above is neither taught nor suggested by Collins et al.

Further, in response to the Examiner's comments on the disclosure by Collins et al. of the use of mineral oil, which are apparently related to the recitation of triglycerides and glycolipids in claim 14 of Applicant, Applicant respectfully submits that claims 13-15 specifically utilize a plant extract, and not a mineral oil. Applicant's specification specifically points out the preference in the invention for plant-derived lipid components (e.g., a "lipid complex that mimics biological membranes and provides a stable matrix, and creates a delivery system to suspend the critical components and facilitate delivery into the stratum corneum of the skin", page 5, line 3 ff). The fact that mineral oil contains some of the same components as the plant-derived substances set forth in claim 14 neither teaches nor suggests that mineral oil is the same substance as this plant extract.

Applicant respectfully requests the Examiner to take judicial notice of the well-known differences between plant extracts and petrolatum derivatives such as mineral oil. As set forth in Applicant's specification (page 4, lines 24-25), petrolatum-containing products such as AQUAPHOR™, which is a petrolatum based ointment containing mineral oil, are distinctly different from Applicant's claimed invention in that they provide a simple barrier, but do not help in skin repair.

Therefore, claim 1 as amended is submitted to be patentable under 35 U.S.C. 103(a) over Collins et al. Claims 3, 4 and 13-15 depend from and contain all of the limitations of claim 1 as amended, and are therefore submitted to be similarly patentable over Collins et al. under 35 U.S.C.

103(a).

(5) Rejection of claims 11-12, 16 and 18 under 35 U.S.C. 103(a) as being unpatentable over Collins et al. together with Cope (US 6,572,868 B1)

Applicant incorporates by reference the above remarks made with respect to claim 1 as amended regarding the Collins et al. cited reference.

Cope teaches a restructuring complex for cosmetic compositions, including among other things, dipalmitoyl hydroxyproline. The Examiner states that one of ordinary skill in the art would have been motivated to add this compound to the composition of Collins et al. Applicant respectfully submits that even if one makes such an addition, the invention of Applicant according to claim 1 is neither taught nor suggested, since the invention of Applicant is patentably distinct from Collins et al.

Therefore, claim 1 as amended is submitted to be patentable under 35 U.S.C. 103(a) over Collins et al. together with Cope. Claims 11-12, 16 and 18 depend from and contain all of the limitations of claim 1 as amended, and are therefore submitted to be similarly patentable over Collins et al. together with Cope under 35 U.S.C. 103(a).

(6) Rejection of claim 17 under 35 U.S.C. 103(a) as being unpatentable over Collins et al. together with Cope and Pirisi, A. (1998)

Applicant incorporates by reference the above remarks made with respect to claim 1 as amended and the Collins et al. and Cope references.

As stated by the Examiner, Pirisi teaches the use of cholesterol as a moisturizing ingredient. Applicant respectfully submits that in addition to cholesterol, claim 17 also teaches addition of ceramide-3, ceramide6-II, ceramide 1, and phytosphingosine, which are neither taught nor suggested by Pirisi or any of the other cited references.

Therefore, claim 1 as amended is submitted to be patentable under 35 U.S.C. 103(a) over Collins et al. together with Pirisi. Claim 17 depends from and contains all of the limitations of

claim 1 as amended and is therefore submitted to be similarly patentable over Collins et al. together with Pirisi under 35 U.S.C. 103(a).

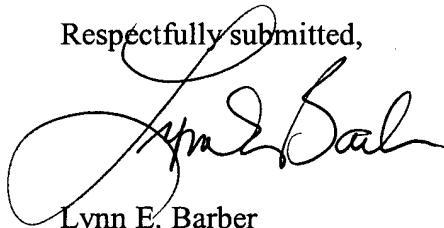
(7) Statement that claims 2, 5-10 and 19 are free of the art

For the reasons above stated, in addition to the claims stated by the Examiner to be free of the art, all of the pending claims (claims 1 and 3-19) are submitted to be fully patentably distinguished over the cited references and in allowable condition. Favorable consideration is therefore requested.

No new claims have been added to the previously pending claims. It is therefore believed that no fee is required for the presentation of this amendment. Any amounts that may be due for presentation of this amendment should be charged to Deposit Account No. 02-0825 of Applicant's attorney.

If any questions or issues remain, the resolution of which the Examiner feels would be advanced by a personal or telephonic conference with Applicant's attorney, the Examiner is invited to contact such attorney at the telephone number noted below.

Respectfully submitted,



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